CIVIL WRIT JURISDICTION CASE No.6199 OF 1990

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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1. Krishna Kumar Choudhary, son of late Munsi Choudhary.
2. Chandra Shekhar Choudhary
3. Prem Shekhar Choudhary
4. Shashi Shekhar Choudhary

Sons of Harichandra Choudhary.
All residents of village – Kajha, P S – K. Nagar, district – Purnea.

---------- Petitioners

Versus

1. The State of Bihar
2. The Collector, Purnea.
3. The Special Deputy Collector Land Reforms, Purnea.
4. Udai Rishi son of Prayag Rishi, resident of village – Kajha Kothi, P.S. - K. Nagar, District – Purnea.

---------- Respondents

For the petitioners: M/S. Hare Krishna Kumar & Siya Ram Shahi.
For the State : Mr. Upendra Kumar, JC to AAG – 8.
For respondent no.4: M/S. Arun Prasad Ambashtha and Ravindra Kumar Choudhary.

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P R E S E N T

THE HON`BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A K Tripathi, J. Annexure-1 is the order passed by the Special Land Reforms Deputy Collector, Purnea under section 48E of the Bihar Tenancy Act deciding the claim of the bataidar in his favour. The order is dated 9.8.1989 against which an appeal was preferred before the Collector, Purnea. The appellate order is dated 21.8.1990. The Collector has upheld the order of the L R D C and did not find merit in the appeal or material to disagree with annexure-1. Petitioners want quashing of both the orders in the present writ application.

2. An application was filed under section 48E of the Bihar

Tenancy Act by respondent No.4 namely, Uday Rishi. His claim was that he was bataidar for more than 7-8 years over certain piece and parcel of land belonging to the petitioners in the district of Purnea. Based on the application the DCLR, Sadar nominated the Circle Officer of K. Nagar as Chairman of the Conciliation Board for rendering decision on the dispute in terms of the Act. More than six months elapsed. Neither a finding or the records was transmitted back to the DCLR by the Circle Officer. The proceeding was withdrawn under section 48E(10). The DCLR thereafter issued notices to the parties for adjudication of the matter. Notices have gone to these petitioners on atleast more than two occasions. Some of them have been served but it is reflected from the decision and the records that they chose to strategically participate in the proceeding and not cooperate all the way. The designated authority recorded the evidence led on behalf of respondent No.4 and based on the evidence and material came to a conclusion holding in favour of respondent no.4. The order is annexure-1 to the writ application. This order not to the liking of these petitioners was appealed against but the appeal has also failed.

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3. Learned counsel appearing on behalf of the petitioners submits that even after recall of the records from the Chairman of the Bataidari Board under section 48E (10) the requirements under the law laid down under sections 3, 4, 5 and 6 are required to be followed. If it has not been done, then the Collector under the Act has failed to comply with the provisions of the Act and the order will

have to go. The other submission is that there was no endeavour made on the part of the Collector to bring about reconciliation and on having failed to do this part of the job the decision rendered against the petitioners requires interference.

4. There is representation on behalf of private respondent no.4 who has filed a detailed counter affidavit rebutting most of the averments and assertions made in the application by the petitioners. His contention is that there was deliberate effort made by the petitioners not to cooperate in any of the proceeding at any stage and despite notice they chose to either not appear or selectively appear according to their wisdom. It was because of their non-cooperation that the Bataidari Board failed in its endeavour. It was in this background that the Collector had to exercise his power under section 48E(10) and when he issued notices to the petitioners they adopted the same method and methodology. According to him, therefore, this is not an attitude of reconciliation but an effort at not only sabotaging the proceeding; but also a clear indication that the petitioners were not in a mood for reconciliation but to wage a legal battle and take to the highest forum.

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5. A perusal of the impugned order contained in annexure-1 as well as annexcure-2 does bear and corroborate the submissions as well as assertions made by the private respondent. Notices had gone to the petitioners issued by the Collector after he had recalled the proceeding from the Bataidari Board but for months together they chose not to appear. They only appeared after the evidence had been

recorded on behalf of the private respondent and submissions had been made. They appeared and filed an application for recall of the witnesses and to have a fresh hearing in the matter on the issue. This approach of the petitioners also does not show that they wanted reconciliation. They only wanted to delay the proceeding on one technicality or the other.

6. This Court therefore is of the opinion that the order which has been rendered by the learned DCLR, contained in annexure-1, is not in breach of any of the provisions of section 48E of the Bihar Tenancy Act. Even the order passed in appeal is in conformity with the facts and findings which have been rendered by the original court.

7. Petitioners have not made out a case for interference with either of the two orders. The writ application is devoid of merit and is dismissed.

(Ajay Kumar Tripathi, J)

Patna High Court:
The 10th December, 2008.
N A F R (RKPathak)

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